No. 91-542

In The
Supreme Court of the United States
October Term, 1991

ELLIS B. WRIGHT, JR., WARDEN, *et al.*,
Petitioners,

v.

FRANK ROBERT WEST, JR.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMICUS CURIAE ON THE MERITS IN SUPPORT OF PETITIONER*

ROBERT A. BUTTERWORTH
Attorney General for
the State of Florida

RICHARD B. MARTELL
Florida Bar #300179
Assistant Attorney General
for the State of Florida

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR AMICUS CURIAE

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*The States joining in this brief are listed in the Appendix to this pleading.

QUESTIONS PRESENTED

The Petitioner presented the following questions:

> I. May a federal court grant collateral relief merely because it disagrees with the good faith reasonable decision of the state courts?
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> II. May a federal court fundamentally alter the standard established by this Court in *Jackson v. Virginia* and vacate a state conviction on the basis of nothing more than "concern" about a deeply-rooted common law principle that the prisoner never raised in state court?

This Court, in granting certiorari, added the following:

> In determining whether to grant a petition for writ of habeas corpus by a person in custody pursuant to the judgment of a state court, should a federal court give deference to the state court's application of law to the specific facts of the petitioner's case or should it review the state court's determination *de novo*?

This brief addresses the latter question.

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INTEREST OF AMICUS CURIAE

The States joined herein as amicus curiae urge this Court to quash the ruling of the United States Court of Appeals for the Fourth Circuit, *West v. Wright,* 931 F.2d 262 (4th Cir.1991). This case presents an important vehicle for this Court to clarify the proper role of a federal court in reviewing, through habeas corpus, the convictions of state prisoners. This Court, in granting certiorari, directed that the parties address an additional question — whether, in passing upon a petition for writ of habeas corpus filed by a prisoner in state custody, a federal court should give deference to the state court's application of law to the specific facts of the petitioner's case or whether *de novo* review should be performed. The states joined herein strongly urge that deference should be given to state court applications of law, and, inasmuch as the question presented literally cuts to the heart of our federal system, the States' interest in the proper resolution of this matter should be beyond dispute.

SUMMARY OF ARGUMENT

The decision of the Fourth Circuit at bar is fundamentally at odds with *Jackson v. Virginia,* 443 U.S. 307 (1979), in which this Court set forth the standards that a federal court should employ in resolving, on habeas corpus, a state prisoner's attack upon the sufficiency of the evidence supporting his conviction. The Fourth Circuit's misapprehension of this Court's precedent, however, does not represent an isolated error, and, in fact, validates the concerns expressed by the three members of this Court, who, in a concurring opinion of *Jackson,* warned of the dangers of allowing this type of intrusive federal review of matters which unquestionably should be left to the States.

This Court, as evidenced by the question added upon granting of certiorari, is plainly concerned as to the respective roles of state and federal courts in the review of state convictions. State court determinations of fact have, of course, been accorded deference under 28 U.S.C. § 2254, whereas those of law have not. This distinction, however, as the Court itself has acknowledged, is often an elusive concept, and would, in any event, seem outdated by the growing expertise of state courts in the resolution of all legal matters presented to them, whether grounded in the state or federal Constitution. This Court, in the recent decision, *Sawyer v. Smith,* ___ U.S. ___, 110 S.Ct. 2822, 2831 (1990), recognized that the courts of the States are, in fact, "coequal parts" of the national judicial system. It is, thus, only fitting that this Court confer true equality upon the States, and in accordance with a number of recent decisions, explicitly declare that, when a state court has afforded a prisoner an opportunity for a full and fair hearing upon his constitutional claim, and where the state courts' resolution of that claim does not represent one which no reasonable court could reach, federal habeas review is inappropriate unless to correct what would amount to "an extreme malfunction in the state criminal justice system." *Jackson,* 443 U.S. 326, 332, n.5 (Stevens, J., concurring).

ARGUMENT

WHEN A FEDERAL COURT DETERMINES WHETHER TO GRANT A PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT, DEFERENCE SHOULD BE GIVEN TO THE STATE COURT'S APPLICATION OF LAW TO THE SPECIFIC FACTS OF THE PETITIONER'S CASE.

In the case at bar, the Fourth Circuit, in essence, reversed a twelve year old Virginia conviction because, *inter alia,* it reweighed the evidence, including the demeanor of the defendant, and disagreed with the applicable Virginia law. Despite the court of appeals' purported attempts to comply with the Court's precedent, *Jackson v. Virginia,* 443 U.S. 307 (1979), it should be beyond dispute that the court did nothing of the kind. *Cf. Jackson,* 443 U.S. at 325, n.16 (in resolving sufficiency of evidence claim, federal court must apply standard "with explicit reference to the substantive elements of the criminal offense as defined by state law.") This case, however, has obvious implications beyond whether, as a matter of fact, Frank Robert West, Jr. stole the goods in question, or, for that matter, whether the decision below represents a misapplication of *Jackson.* In granting certiorari, this Court, plainly concerned by similar abuses, directed the parties to brief an additional question — whether a federal court should give deference to a state court's application of law to the specific facts of a state court petitioner's case or whether *de novo* review should be performed. The States joined herein as amicus urge that deference should in fact be given to state court applications of law, and that in expressly reaching such holding, this Court can not help but to properly accommodate the States' interest in comity and finality.

While this Court, in *Jackson,* held that federal courts could, on habeas corpus, review the sufficiency of evidence in support of a state prisoner's conviction, this result was not reached by unanimous consent. Justice Stevens in his concurring opinion, which was joined by then Chief Justice Burger and then Justice Rehnquist, stated prophetically:

> The federal district courts are therefore being directed to simply duplicate the reviewing function that is now being performed adequately by state appellate courts. In my view, this task may well be inconsistent with the prohibition — added by Congress to the federal habeas statute in order to forestall undue federal interference with the state proceedings, *see Wainwright v. Sykes,* 433 U.S. 72, 80, 97 S.Ct. 2497, 2503, 53 L.Ed.2d 594 — against overturning 'a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction.' 28 U.S.C. § 2254(d). *See La Vallee v. Delle Rose,* 410 U.S. 690, 93 S.Ct. 1203, 35 L.Ed.2d 637. In any case, to assign a single federal district judge the responsibility of directly reviewing, and inevitably supervising, the most routine work of the highest courts of a State can only undermine the morale and the esteem of the state judiciary — particularly when the stated purpose of the additional layer of review is to determine whether the State fact-finder is 'rational'. (footnote omitted) Such consequences are intangible but nonetheless significant.
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> *Jackson,* 443 U.S. at 336 (Stevens, J., concurring in judgment).

The concurring opinion, which likewise cited to such authoritative treatises as Bartels, *Avoiding a Comity of Errors,* 29 Stan.L.Rev.27 (1976) and Bator, *Finality in*

Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv.L.Rev.441 (1963), also noted that the traditional justifications for federal review of state proceedings — that federal judges have special expertise and that they are less susceptible to political pressures than their peers on the state bench — were particularly lacking in the context of sufficiency of the evidence claims, and, would seem to have agreed with Virginia that application of the *Stone v. Powell* rationale was appropriate. *Id.* at 336-7, n.9. The concurrence's conclusion was that the cost of allowing this type of "duplicative" federal review, in terms of finality and comity, was simply not justified.

Justice Stevens was correct, and the instant decision of the Fourth Circuit is living proof. Obviously, any federal review of a state conviction represents an intrusion, which, inevitably, leads to friction between the two sovereigns. *Cf. Engle v. Isaac,* 456 U.S. 107, 129 (1982) ("Federal intrusions into state criminal trials frustrate both the States' sovereign power to punish offenders and their good faith attempts to honor constitutional rights."); *Sumner v. Mata,* 449 U.S. 548, 551 (1981) ("A writ issued at the behest of a petitioner under 28 U.S.C. § 2254 is in effect overturning either the factual or legal conclusions reached by the state-court system under the judgment of which the petitioner stands convicted, and friction is a likely result."). This type of intrusion is particularly unwarranted when, as here, the federal court is asked to review a state court's application of its own law to the facts before it. *Cf. Estelle v. McGuire,* ___ U.S. ___, 112 S.Ct. 475, 480 (1991) ("...we reemphasize that it is not the province of a federal habeas court to reexamine state court determinations on state law questions."). Despite whatever constitutional rubric a petitioner, or his counsel, may choose to employ, a federal habeas court which is asked to pass upon the sufficiency of the evidence in support of a state prisoner's conviction is being asked to apply state law to the state court record, no more and no less. It is difficult

to see how, or why, this *Jackson*-imposed burden can survive *McGuire*. Accordingly, the States joined herein as amicus ask this Court to explicitly hold that state court applications of law to the specific facts before them are entitled to deference in a proceeding brought under 28 U.S.C. § 2254. Such a holding would clearly have precluded the result below.

The question posed by this Court, however, does not limit itself to the deference to be paid a state court's application of state law to given facts, and, indeed, there is no good reason why the question, or this Court's consideration, should be so circumscribed. As this Court has frequently recognized, state courts are daily confronted with claims brought under the federal constitution, and state jurists have proven themselves more than capable of fairly adjudicating those matters. In *Sawyer v. Smith,* ___ U.S. ___, 110 S.Ct. 2822, 2831 (1990), this Court recently held,

> Petitioner appears to contend that state courts will recognize federal constitutional protections only if they are compelled to do so by federal precedent and the threat of federal habeas review....This argument is premised upon a skepticism of state courts that we decline to endorse. State courts are coequal parts of our national judicial system and give serious attention to their responsibilities for enforcing the commands of the Constitution.

Following the rationale of the majority decision in *Stone v. Powell,* 428 U.S. 465 (1976), and the compelling concurring opinion of Justice O'Connor in *Duckworth v. Eagan,* 492 U.S. 195, 205 (1989), in which Justice Scalia also joined, it would seem more than appropriate that it be expressly recognized that state court applications of law, state and federal, to the facts of a given petitioner's case be afforded deference under § 2254. The traditional

"dividing line" between state court determinations to be afforded deference, *i.e.,* "matters of 'fact' and matters of 'law'," was admitted to be "elusive at best" even at the time of pronouncement. *See Miller v. Fenton,* 474 U.S. 104, 114 (1985). Likewise, this Court has acknowledged that there is a certain dynamic as to the availability of the writ and that the interests of comity and finality must be considered in determining the proper scope of habeas review. *See Teague v. Lane,* 489 U.S. 288, 308 (1989) (citing, *inter alia, Stone v. Powell*). *See also Kuhlmann v. Wilson,* 477 U.S. 436, 447 (1986) ("...the Court never has defined the scope of the writ simply by reference to a perceived need to assure that an individual accused of the crime is afforded a trial free of constitutional error.") (cited in *Teague,* 489 U.S. at 308).

All of the above being true, it truly serves no national purpose to ignore and denigrate the ability of state courts to apply and interpret law. Indeed, this Court has already held that state courts' reasonable good-faith interpretations of existing precedent should be validated. *See Butler v. McKellar,* 494 U.S. 407, 414 (1990); *Saffle v. Parks,* 494 U.S. 484, 490 (1990) (discussing reasonableness of state courts' disposition of petitioner's Eighth Amendment claim). The fact remains that the role of habeas corpus proceedings is not, and should not be, without limitation. As this Court held in *Barefoot v. Estelle,* 463 U.S. 880, 887-888 (1983),

> It must be remembered that direct appeal is the primary avenue for review of a conviction or sentence, and death penalty cases are no exception. When the process of direct review — which includes the right to petition this Court for a writ of certiorari — comes to an end, a presumption of finality and legality attaches to the conviction and sentence. The role of federal habeas proceedings, while important in assuring that constitutional rights are observed, is secondary and limited.

> Federal courts are not forums in which to relitigate state trials.
>
> *See also Autry v. Estelle,* 464 U.S. 1, 2-3 (1983).

Surely, even West would concede that conditions have changed since 1867, when, during Reconstruction, federal habeas corpus was made available to state prisoners, and that, even since Congress last revised habeas corpus in the 1960's, state courts have undergone dramatic change. Not only do state prisoners have post-conviction and collateral remedies available to them that literally could not have been dreamed of decades ago, but, as noted in *Sawyer,* a state prisoner can unquestionably present a federal claim to the courts of a state with the confidence that the claim will be reviewed with the same scrutiny and probity that any federal court could muster. The costs in finality and comity simply do not justify the continued treatment of state courts, on matters of law, as second-class citizens.

While Respondent West will inevitably claim that amicus seek nothing less than the total evisceration of federal habeas corpus, that is simply not the case. The States joined herein simply desire that they become truly "coequal partners" in our national judicial system, in fact as well as reputation. Federal courts should always stand ready, on habeas corpus, to "guard against extreme malfunctions in the state criminal justice system." *Jackson,* 443 U.S. at 332, n.5. (Stevens, J., concurring in judgment). But, as long as a state petitioner has been afforded an opportunity for a full and fair hearing in state court on his constitutional claim, *Cf. Stone v. Powell, supra,* and as long as the state courts' resolution of that claim does not represent a result which no reasonable court could reach, *Cf. Butler, supra, Parks, supra, de novo* federal collateral review is simply not warranted. Any other conclusion relegates the courts of the fifty states of this union to nothing more than fact-finders, or

glorified handmaidens, for the federal courts. Nothing in the Constitution, the acts of Congress or this Court's precedents mandate such a stark and inequitable conclusion. Accordingly, the States joined herein as amicus respectfully urge this Court to hold that deference should be paid to state court applications of law to the given facts of a habeas petitioner's case, and further urge this Court to quash the opinion of the Fourth Circuit below.

CONCLUSION

The judgment of the United States Court of Appeals for the Fourth Circuit should be reversed, and this Court should expressly hold that, as set forth above, a federal court, in an action brought under 28 U.S.C. § 2254, must give deference to a state court's application of law to the specific facts of the case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General for
the State of Florida

RICHARD B. MARTELL
Florida Bar #300179
Assistant Attorney General
for the State of Florida

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

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APPENDIX

ROBERT A. BUTTERWORTH
Attorney General for
the State of Florida

RICHARD B. MARTELL
Florida Bar #300179
Assistant Attorney General
for the State of Florida

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR AMICUS CURIAE

The following states, through their respective Attorneys General, join this brief:

The Honorable Charles E. Cole
Attorney General of Alaska

The Honorable Grant Woods
Attorney General of Arizona

The Honorable Winston Bryant
Attorney General of Arkansas

The Honorable Daniel E. Lungren
Attorney General of California

The Honorable Gale A. Norton
Attorney General of Colorado

The Honorable Richard N. Palmer
Chief State's Attorney
State of Connecticut

The Honorable Charles M. Oberly, III
Attorney General of Delaware

The Honorable Michael J. Bowers
Attorney General of Georgia

The Honorable Warren Price, III
Attorney General of Hawaii

The Honorable Larry EchoHawk
Attorney General of Idaho

The Honorable Linley E. Pearson
Attorney General of Indiana

The Honorable Bonnie J. Campbell
Attorney General of Iowa

The Honorable Robert T. Stephan
Attorney General of Kansas

The Honorable Chris Gorman
Attorney General of Kentucky

The Honorable J. Joseph Curran, Jr.
Attorney General of Maryland

The Honorable Hubert H. Humphrey, III
Attorney General of Minnesota

The Honorable Michael C. Moore
Attorney General of Mississippi

The Honorable William L. Webster
Attorney General of Missouri

The Honorable Marc Racicot
Attorney General of Montana

The Honorable Don Stenberg
Attorney General of Nebraska

The Honorable Frankie Sue Del Papa
Attorney General of Nevada

The Honorable John P. Arnold
Attorney General of New Hampshire

The Honorable Robert J. Del Tufo
Attorney General of New Jersey

The Honorable Tom Udall
Attorney General of New Mexico

The Honorable Lacy H. Thornburg
Attorney General of North Carolina

The Honorable Nicholas J. Spaeth
Attorney General of North Dakota

The Honorable Susan B. Loving
Attorney General of Oklahoma

The Honorable Charles S. Crookham
Attorney General of Oregon

The Honorable Ernest D. Preate, Jr.
Attorney General
Commonwealth of Pennsylvania

The Honorable T. Travis Medlock
Attorney General of South Carolina

The Honorable Mark Barnett
Attorney General of South Dakota

The Honorable Dan Morales
Attorney General of Texas

The Honorable Paul Van Dam
Attorney General of Utah

The Honorable Jeffrey L. Amestoy
Attorney General of Vermont

The Honorable Kenneth O. Eikenberry
Attorney General of Washington

The Honorable Mario J. Palumbo
Attorney General of West Virginia

The Honorable Joseph B. Meyer
Attorney General of Wyoming